IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 19TH SEPTEMBER 2007 / 28TH BHADRA 1929

Bail Appl..No. 5617 of 2007()

SC.684/2005 of ADDL.SUB COURT, PALAKKAD

.....

CRIME NO.115/2001 OF PUDUNAGARAM POLICE STATION

PETITIONER/3RD ACCUSED

BABU @ SODA BABU, S/O.ARUMUGHAN,
AGED 36 YEARS, THEKKEKKADU, VANDITHAVALAM,
CHITTUR TALUK, PALAKKAD.

BY ADV. SRI.K.P.BALAGOPAL

RESPONDENTS: COMPLAINANT

STATE OF KERALA REPRESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR ADV.SRI.JAI GEORGE

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 19/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R.BASANT, J

= = = = = = = = = = = = = =

B.A.No.5617 of 2007

= = = = = = = = = = = = = =

Dated this the 19th day of September, 2007

ORDER

Application for anticipatory bail The petitioner faces allegations, inter alia, under Sec.307 read with 149 IPC. The petitioner is the 3rd accused . Altogether there are three accused persons in the crime. The case has been committed to the Court of Sessions. The petitioner did not appear before the learned Sessions Judge. Consequently a warrant of arrest has been issued by the learned Sessions Judge against the petitioner. The petitioner apprehends imminent arrest. In these circumstances, appropriate directions may be issued under section 438 Cr.P.C, prays the learned counsel for the petitioner.

2. The learned Public Prosecutor opposes the application. The learned Public Prosecutor submits that it is for the petitioner to appear before the learned Sessions Judge and seek regular bail in the ordinary course.

3. I have considered all the relevant inputs. After the decision in **Bharat Chaudhary v. State of Bihar** [A.I.R 2003 S.C 4662], it is trite that powers under Section 438 Cr.P.C can be invoked in favour of a person who apprehends arrest in execution of a non bailable warrant issued by a court in a pending proceedings. But even for that,

sufficient and satisfactory reasons must be shown to exist. I am not persuaded in the facts and circumstances of this case to conclude that any such reasons exist.

3. It is for the petitioner to appear before the learned Sessions Judge and explain to the learned Sessions Judge the circumstances under which he could not earlier appear before the learned Sessions Judge . I have no reason to assume that the learned Sessions Judge would not consider such application on merits, in accordance with law and expeditiously. Every court must do the same. No special or specific direction appears to be necessary. Sufficient general directions have already been issued in **Alice George v. The Deputy Superintendent of Police [**2003(1) KLT 339].

4. This application is, in these circumstances, dismissed, but with the specific observation that if the petitioner appears before the learned Sessions Judge and applies for bail after giving sufficient prior notice to the Prosecutor in charge of the case, the learned Sessions Judge must proceed to pass appropriate orders on merits and expeditiously - on the date of surrender itself, unless there are compelling reasons.

(R.BASANT, JUDGE)

sj

/TRUE COPY/

P.A.TO JUDGE